



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 2, 1994

Honorable Tom Craddick
Chair

House Committee on Ways and Means
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-081

Re: Whether a nonprofit organization may inspect, clean, and repair used eyeglasses to be donated to people who are unable to afford them (RQ-631)

Dear Representative Craddick:

You ask whether a nonprofit organization may donate used eyeglasses to people who are unable to afford them. You explain that the nonprofit organization "is going to undertake a program of recycling used eyeglasses to inspect,¹ clean, conduct minor repairs (where necessary - other than actual grinding of any lens), and then distribute eyeglasses to persons who have need." We understand that you are interested in whether there are any state laws governing the dispensing of donated, used, prescription eyeglasses.

We note that your letter suggests that recipients of eyeglasses may be examined by lay people who are not licensed by the Texas Optometry Board. The Texas Optometry Board has asked us to address whether this procedure is permissible under the Texas Optometry Act, V.T.C.S. arts. 4552-1.01 to 4552-7.02. Because letters submitted on behalf of the nonprofit organization assert that it is not the case that recipients will be examined by people who are not licensed, we decline to reach that issue here. The Texas Optometry Board is authorized to seek an attorney general opinion under the Government Code and may submit a separate, formal request for an opinion if it concludes it is necessary to do so. In this opinion, we address only whether a nonprofit organization may inspect, clean, and repair used eyeglasses for purposes of donating them to the needy. We do not address by whom such eyeglasses may be dispensed.

We have located two state statutes which appear to be relevant to your request. The first, the Texas Optometry Act, V.T.C.S. arts. 4552-1.01 to 4552-7.02, requires people who practice optometry to be licensed. The inspection, cleaning, and repairing of eyeglasses is not included in the definition of the term "practice of optometry." See V.T.C.S. art. 4552-1.02(1). Article 4552-5.17 sets forth certain exceptions to the Texas Optometry Act. Subsection (c) provides that "[n]othing in this Act shall be construed to prevent persons from selling ready-to-wear spectacles as merchandise at retail, nor to

¹By "inspect," we assume you mean that eyeglasses will be examined to determine whether they require cleaning and/or repair.

prevent unlicensed persons from making simple repairs to spectacles."² This provision appears to except the inspection, cleaning and making of minor repairs to eyeglasses from the scope of the Texas Optometry Act.

The Opticians' Registry Act establishes a voluntary registration and certification program for "dispensing opticians," *i.e.*, people who provide or offer to provide spectacle or contact lens dispensing services or products to the public. *See* V.T.C.S. art. 4551-1, § 3(6) (defining "dispensing optician" or "ophthalmic dispenser"). "Spectacle dispensing" is defined as "the design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist." *Id.* § 3(7). The term includes the verification of the quality of finished lenses and the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses. *Id.* § 3(7)(D), (F). "Spectacle dispensing" does not appear limited to commercial sales, and thus may include donations. We note, however, that even if the activities of the nonprofit organization constitute "spectacle dispensing" under this provision, the Opticians' Registry Act does not prohibit these activities by nonregistered persons. *See id.* § 4 (prohibited acts).

In sum, neither the Texas Optometry Act nor the Opticians' Registry Act precludes a nonprofit organization from inspecting, cleaning, and repairing used eyeglasses to be donated to people who are unable to afford them.

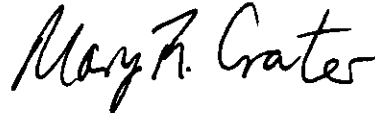
²Subsection (d) of article 4552-5.17 provides that

[n]othing in this Act shall prevent, limit, or interfere with the right of a dispensing optician or ophthalmic dispenser under the Opticians' Registry Act (Article 4551-1, Vernon's Texas Civil Statutes) and its subsequent amendments to engage in spectacle or contact lens dispensing as defined by that Act. This subsection does not prohibit the board from acting under this Act to restrict the unauthorized practice of optometry.

S U M M A R Y

Neither the Texas Optometry Act nor the Opticians' Registry Act precludes a nonprofit organization from inspecting, cleaning, and repairing used eyeglasses to be donated to people who are unable to afford them.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee